IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9443 OF 2004

Katale Vividh Karyakari)
Seva Sahakari Society Limited)
through its Chairman Shri Mahendra)
R. Adhikari having its registered)
office at and Post Katale,)
Taluka Palghar, Dist.Thane)...Petitioners

V/s.

1. State of Maharashtra)
through the Secretary of)
Agriculture and Cooperation.)

2. General Insurance Corporation of)
India, Maharashtra State Level)
Crop. Insurance Insurance Cell,)
Stock Exchange Tower, 20th Floor,)
Dalal Street, Fort,)
Mumbai 400 023.)

3. The Thane District Central Coop.)
Bank Ltd., Chatrapati Shivaji Peth,)
Thane P.B. No.19.)...Respondents

Ms.Neeta P. Karnik for the Petitioners.

Shri V.P. Malvankar, Assistant Government Pleader, for Respondent No.1.

Shri S.K. Shetty instructed by M/s.Shetty & Associates for Respondent No.2.

Shri S.P. Thorat for Respondent No.3.

CORAM : H.S. BEDI, C.J., &
V.M. KANADE, J.

DATED : DECEMBER 12, 2006.

JUDGMENT (PER H.S. BEDI, C.J.) :-

1. The petitioner society consists of marginal farmers each owning less than 5 acres of agricultural land. This petition has been filed for a limited relief on facts which are admitted by the respondents. It appears that certain areas of Maharashtra were declared as drought affected areas for the years 2001, 2002 by orders passed in the year 2004. A scheme for insurance was framed by the Central Government for the benefit of farmers. The petitioners' case is that their village Lowre fell within Taluka Manor and not Palghar as has been shown in Exhibit I - Resolution dated 2nd July, 2002 with the result that this mistake resulted in compensation of about 17% though they were entitled to 51.80%. The petitioners have also annexed at Exhibit E, a letter dated 31st May, 2004 issued by the Tahsildar, Taluka Palghar stating that village Lowre did not fall within Palghar

and fell within Manor Circle.

2. Replies have been filed on behalf of respondent Nos.1 and 3 i.e. the State Government and the Bank. It has been pointed out that the facts given by the petitioners were correct and that the petitioners' village Lowre fell within the area of Manor Taluka and not Palghar and that this mistake had been noticed after the filing of the petition. Respondent No.2 – The Insurance Company has, however, filed its reply and the stand taken is that the Court should not entertain this matter under Article 226 of the Constitution as it arose out of a contract and the petitioner should get its relief by filing a civil suit. Reliance has been placed on this argument on the Judgment recorded by the Division Bench of this Court in **Writ Petition No. 5162 of 2001 (Pandurang Punjaji Waje & Ors. V/s. General Insurance Corporation of India & Ors.)** on 17th February, 2003.

3. We have heard the learned Counsel for the parties. In view of the stand taken by respondent Nos.1 and 3 with regard to the petitioners' claim that their village Lowre

fell in Manor Circle, we find that no other argument can arise. The argument about the alternative remedy is to be rejected for the simple reason that there is no contract between the Insurance Company and the farmers and that it was on account of an admitted mistake on the part of the Government that the farmers have been denied their due.

4. We, accordingly, allow this petition and direct that the petitioners' claim would be examined in the terms of the compensation given to the farmers of Manor Circle and payment shall be made to them within a period of three months from today. We clarify that in case the payment is not made within the aforesaid period, the petitioners would be at liberty to apply for further directions from this Court.

. The petition is disposed of accordingly.

CHIEF JUSTICE

V.M. KANADE, J.